

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, : No. 06 CV 2621 (LTS)  
Plaintiff, :  
- against - :  
ANDREAS BADIAN, JACOB SPINNER, MOTTES :  
DRILLMAN, JEFFREY "DANNY" GRAHAM, POND :  
SECURITIES CORPORATION d/b/a POND EQUITIES, :  
EZRA BIRNBAUM AND SHAYE HIRSCH, :  
Defendants. :  
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**DECLARATION OF JOSHUA S. SOHN IN SUPPORT OF  
DEFENDANT ANDREAS BADIAN'S MOTION *IN LIMINE* FOR AN ORDER  
STRIKING CERTAIN WITNESSES DISCLOSED BY THE SEC AND  
PRECLUDING THE SEC FROM CALLING THESE WITNESSES AT TRIAL**

JOSHUA S. SOHN, an attorney admitted to the practice of law in the State of New York, declares pursuant to 28 U.S.C. § 1746 as follows:

1. I am admitted to the Bar of this Court and am a partner at DLA Piper LLP (US), counsel for Defendant Andreas Badian. I submit this Declaration in support of Defendant Andreas Badian's motion *in limine* for an order striking certain witnesses disclosed by Plaintiff, the Securities and Exchange Commission (the "SEC"), in its Rule 26(a)(3) Disclosures, dated November 2, 2010, (the "SEC's Disclosures") in their entirety and precluding the SEC from calling these witnesses at trial.

2. Attached as Exhibit 1 is a true and correct copy of the complaint captioned *SEC v. Rhino et al.*, dated February 26, 2003.

3. Attached as Exhibit 2 is a true and correct copy of the SEC Litigation Press Release, dated February 27, 2003.

4. Attached as Exhibit 3 is a true and correct copy of the Notice of Deposition of the SEC, pursuant to Rule 30(b)(6) dated October 21, 2008.

5. Attached as Exhibit 4 is a true and correct copy of the Deposition Notice of Christopher Ehrman, dated October 21, 2008.

6. Attached as Exhibit 5 is a true and correct copy of a letter from Kenneth Guido to Counsel for Badian, dated November 5, 2008.

7. Attached as Exhibit 6 is a true and correct copy of a letter from Kenneth Guido to Magistrate Judge Douglas F. Eaton, dated November 6, 2008.

8. Attached as Exhibit 7 is a true and correct copy of an email between Rachel Gupta and Kenneth Guido, dated November 10, 2008.

9. Attached as Exhibit 8 is a true and correct copy of an email from Rachel Gupta to all counsel, dated December 1, 2008.

10. Attached as Exhibit 9 is a true and correct copy of correspondence with attachments between Megan K. Vesely and Kenneth Guido, dated August 27, 2009.

11. Attached as Exhibit 10 is a true and correct copy of an email with attachment from Megan K. Vesely to Kenneth Guido, dated August 31, 2009.

12. Attached as Exhibit 11 is a true and correct copy of an email with attachment from Caryn G. Schechman to Kenneth Guido, dated November 5, 2009.

13. Attached as Exhibit 12 is a true and correct copy of an email with attachments from Kenneth Guido to Counsel for Badian, dated November 10, 2009.

14. Attached as Exhibit 13 is a true and correct copy of a letter from Badian and the SEC to Magistrate Judge Cott, dated February 18, 2010.

15. Attached as Exhibit 14 is a true and correct copy of the SEC's Witness List, dated November 2, 2010, filed pursuant to Rule 26(a)(3) of the Federal Rules of Civil Procedure.

16. Attached as Exhibit 15 is a true and correct copy of a letter from Joshua S. Sohn to the Court, dated November 8, 2010.

17. Attached as Exhibit 16 is a true and correct copy of a letter from Kenneth Guido to the Court, dated November 9, 2010.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: New York, New York  
November 17, 2010

/s/

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*Attorneys for Defendant Andreas Badian*